

Message

**From:** Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]  
**Sent:** 9/14/2018 6:40:12 PM  
**To:** Bohan, Suzanne [bohan.suzanne@epa.gov]; Palomares, Art [Palomares.Art@epa.gov]  
**Subject:** FW: EPA Response to [Personal Matters / Ex. 6] and 9/11/2018  
**Attachments:** jjs markup COLT MS4 CDPHE GENERAL PERMIT 2016-2021.pdf

# Deliberative Process / Ex. 5

Thanks, I appreciate your working with [Personal Matters / Ex. 6] his concerns.

Doug

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**From:** [Personal Matters / Ex. 6]  
**Sent:** Friday, September 14, 2018 11:47 AM  
**To:** Palomares, Art <Palomares.Art@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; patrick.infaltzer@state.co.us  
**Subject:** Re: EPA Response to [Personal Matters / Ex. 6] 11/2018

Art, Doug, Suzanne, Patrick,

Good afternoon.

The email from Art was very vague and lacked details, and data , I am sure it was scrubbed by many eyes.

We believe that there are problems here since we have seen with our own eyes the problems, to the best of our knowledge no one from any of your respective organizations have put eyes on the problems.

This issue will not go away until it has been address in the same manner that your respective organizations would if the pollution had be done by someone other that a MS4 permit holder. Wether a MS4 permit holder or any other organization causes pollution from Hydrocarbons Must be Held to the SAME Rules and Regulation. We do know that anything containing Hydrocarbons Do Have Reportable Quantities by the EPA?

Naphthalene has a RQ of 100 lbs.

Naphthalenes PAH's are contained in Asphalt.

Has anyone in any of your organizations aware of this fact?

We have a right to have this matter taken care of as pollution to our watersheds are areas of concerns for ALL Citizens.

We have the following questions:

- 1) From your email it appears that you are referring to the spill that was reported in April this year that occurred from October 2017 thru April 2018 the 1st spill is this correct?
- 2) Are you aware that a 2nd spill occurred in August 2018?
- 3) What are the reportable quantities for Oil emulsions?
- 4) When did either the CDPHE and/or EDA visit the sites and perform inspection/sampling?
- 5) Where can we find ALL communications on this matter from both the EPA and CDPHE?
- 6) By Whom and by using what data sets is the decision made that a MS4 operator is following their permit?
- 7) Who determines that Best Practices are and if they are being followed?
- 8) Is the MS4 permit holder expected to follow the same actions as anyone working in their MS4 permit area?
- 9) Were do we obtain all documents including site inspection report, sample report, notification from the MS4 permit holder, communications etc for both the Event that happen in late 2017 thru April 2018 and the 2nd event that started on July 25, 2018?

Below are some comments and statements for your review and comment:

Taken from MS4 permit wording:

**Minimize:**

1. The term “minimize,” for purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.

-Please explain how the ToP is meeting this section?

-Since in this case the MS4 permit holder is the party that is causing the problem who is watching that they follow the permit? Does the EPA/CDPHE expect that the permit holder will self report?

-How do you respond to these sections of the attached MS4 permit in this event?

Please see the attached mark up in purple of the Lone Tree ms4( I was unable to find the ToP MS4 permit, if you provide I will also markup section in this same manner)

Please respond your thoughts on each of the attached photos all taken after the 2nd incident:

Photo #1 material from the 2nd Spill in the C&G

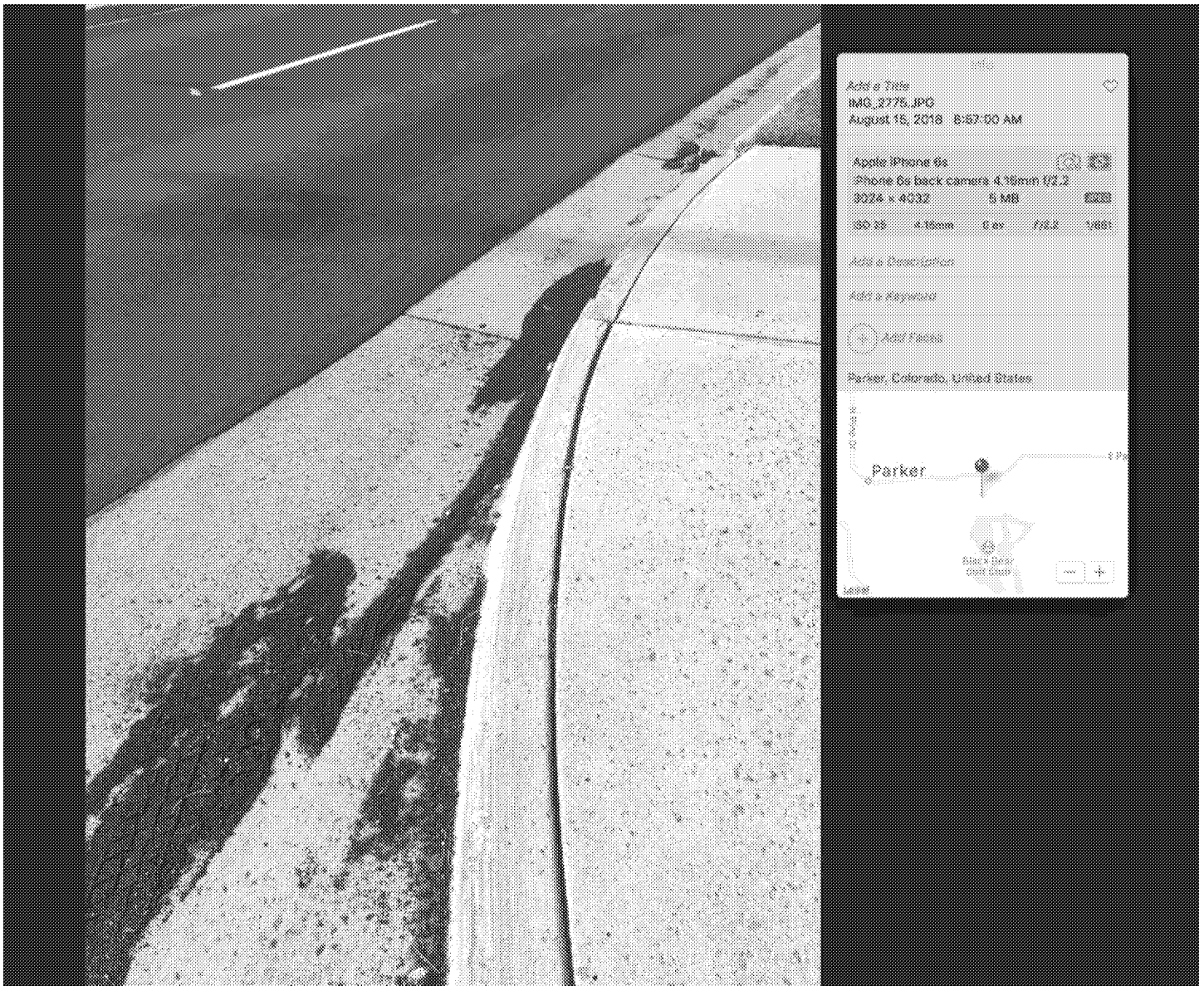


Photo #2 Material in the C&G from the 2nd spill



Photo #3

Material in outfall from the 2nd spill



Photo #4  
Material in outfall from 2nd spill

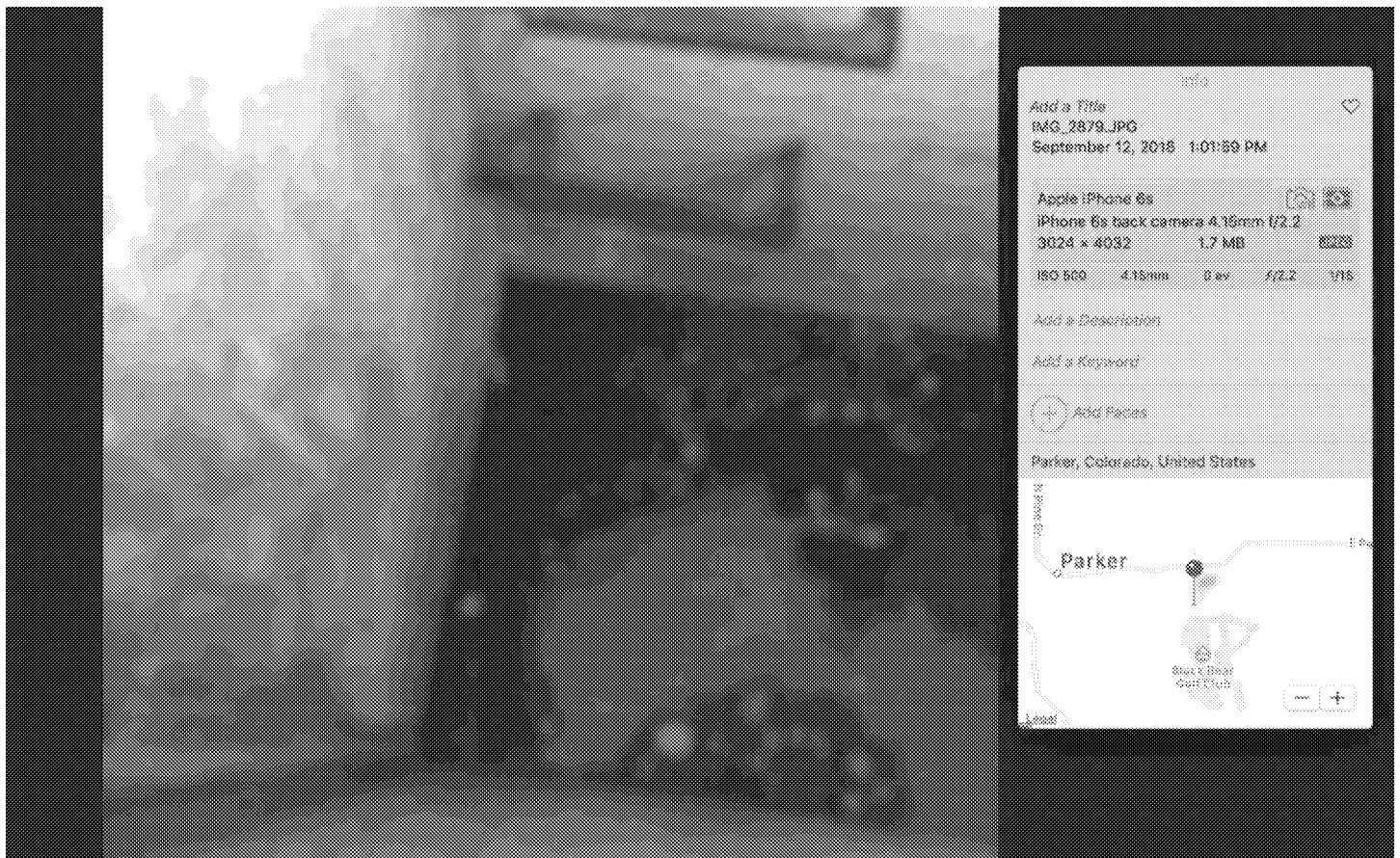
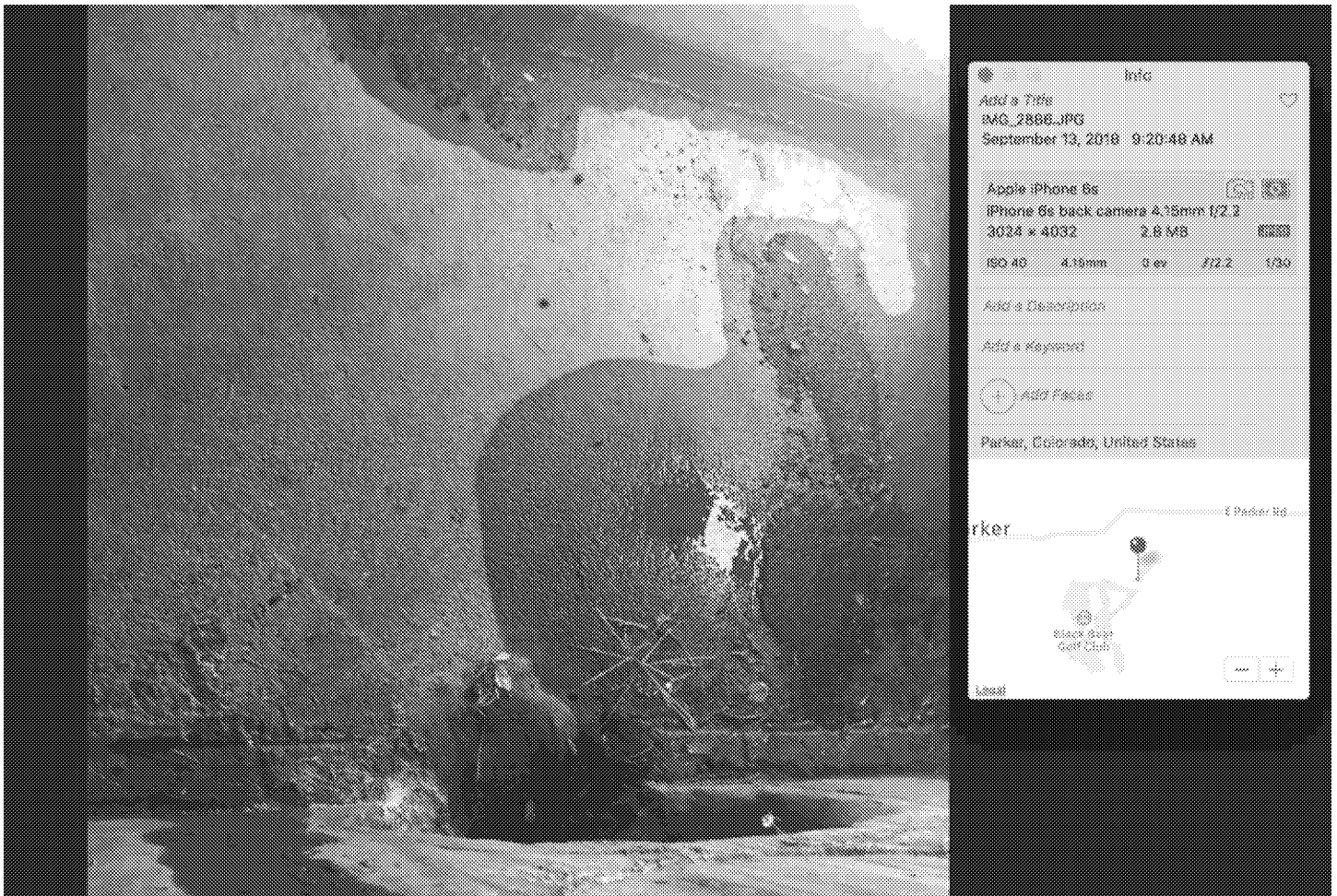


Photo #5

Material in outfall from the 2nd spill note material in the outlet to the watershed



We wait your explanation of actual conditions on site that are still occurring and causing pollution to our Cherry Creek Watershed affecting our water safety.

Please respond in a timely manner as each and every time it rains this material moves farther and farther into the watershed making it more difficult to clean up.

Regards,

**Personal Matters / Ex. 6**

Attachment for your comment on items highlighted in purple>

On Sep 11, 2018, at 11:11 AM, Palomares, Art <[Palomares.Art@epa.gov](mailto:Palomares.Art@epa.gov)> wrote:

**Personal Matters / Ex. 6**

Introduction

Thank you for your continued interest in ensuring that the State of Colorado's surface waters are safe and protective of aquatic life. We have followed your concerns closely and we've communicated both verbally and in writing in response to your concerns. As previously noted, the Colorado Department of Public Health and the Environment is the primary government agency responsible for addressing your concerns. EPA defers to authorized states and does not typically intervene in situations such as this unless there is an ongoing noncompliance issue that a state agency is unable or unwilling to address. Having said that, EPA has taken an interest in your concerns and continues to coordinate with CDPHE.

#### Background and Regulatory Requirements

CDPHE responded to the initial issue you brought to our attention by making inquiries of the Town of Parker about the release of roadway materials to the stormwater collection system and the Cherry Creek watershed. The Town's response identified that the source of the releases was the failure of a chipseal roadway project resulting in the potential for stormwater events to transport materials to waterways. It's our understanding the Town increased street sweeping, cleaning of inlets, and removal of materials from a drop structure. In a phone call between CDPHE and the Town, the Town indicated it would be working to stabilize the roadway surfaces.

The Town of Parker has a discharge permit issued by CDPHE that authorizes the discharges of stormwater to Cherry Creek and requires controls to minimize the discharge of pollutants, which we understand CDPHE has previously provided to you. Below are relevant permit provisions related to this matter:

- Part I.E.5. of the Town's permit requires the Town to "implement a program for Pollution Prevention/Good Housekeeping for facilities and operations that they own, operate, or perform within the permit area. The program must prevent or reduce water quality impacts from pollutants being discharged to municipal storm water systems from municipal facilities and operations."
- Part I.E.5.a.i. of the permit states with regard to pollution control measures under the Pollution Prevention/Good Housekeeping program, "At a minimum, control measures must be adequately designed to prevent or reduce all potential pollutant associated with applicable municipal facilities and operations to prevent or minimize the discharge of pollutants, including trash, to state waters."
- Part I.B.5 of the permit defines the term "minimize. "The term "minimize," for purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices."
- As part of the Pollution Prevention/Good Housekeeping program requirement, Part I.E.5.a.iii. of the permit requires the Town of Parker to "implement control measures that prevent or reduce discharges for applicable municipal operations," including "operation and maintenance of streets, roads, highways."

There is no indication the Town is failing to implement the Pollution Prevention/Good Housekeeping program required by the permit. Please note that the CDPHE-issued permit does not require that the Town of Parker prevent all discharges of materials to Cherry Creek. Any such permit issued by a state or the EPA, whether it be issued to a municipality for stormwater discharges or a wastewater treatment plant discharge, allows pollutants to be discharged under the conditions of the permit. The Town's permit requires a program to manage the discharge of pollutants and reduce the impacts of those pollutants on water quality. Actions such as street sweeping, cleaning out inlets, and removing materials from the drop structure are among the type of actions that accomplish this.



Current Status

CDPHE has advised the EPA that it does not believe this is a compliance issue with the Town of Parker's permit. Therefore, EPA will monitor the status of your concerns and at this time no further action is necessary.

Closing

In closing, EPA thanks you for your support in protecting human health and the environment. We take your concerns seriously and if circumstances change and violations of the permit do occur, be assured the EPA will collaborate with CDPHE to obtain compliance. I have copied Mayor Waid and CDPHE Water Quality Division Director Patrick Pfaltzgraff on this email to ensure these respective government organizations are aware of your concerns.

Thank you,

Art Palomares  
Water Enforcement Program Director  
EPA Region 8



United States Environmental Protection Agency